

REMARKS

Status of the Claims

Claims 1-24, 29-31, 33, 34, 36, 37, 39 and 40 are now pending in the present application, Claims 25-27, 28, 32, 35, 38, and 41-44 having been previously canceled, and Claims 45-48 having been canceled herein. Claims 1, 8, 16, 29, 31, 33, 34, 36, 37, 39, and 40 have been amended to more clearly define the subject matter being claimed.

Claims Rejected under 35 U.S.C. 112, Second Paragraph

The Examiner has rejected Claims 45-48 as being indefinite, because each claim refers to two images, and the claims do not specify for which of the images the spatial frequency content data is calculated.

Claims 45-48 have been canceled, because the subject matter of such claims has been introduced into the independent claims to distinguish over the art. Care has been taken to ensure the indefiniteness issue the Examiner has identified has been addressed in the amendment to the independent claims (i.e., the claims as amended specify the image being processed to determine the spatial frequency content data).

The Examiner has correctly noted that Claim 48 was identical to Claim 45. Claim 48 should have been dependent upon Claim 29, not Claim 1 (such that Claim 45 was dependent upon independent Claim 1, Claim 46 was dependent upon independent Claim 8, Claim 47 was dependent upon independent Claim 16, and Claim 48 was dependent upon independent Claim 29).

Claims Rejected under 35 U.S.C. § 103(a)

Claims 1-26, 29-31, 33, 34, 36, 37, 39, and 40 have been rejected under 35 U.S.C. § 103(a) as unpatentable over various combinations of references, including U.S. Patent Publication No. 2002/0071121 (Ortyn), U.S. Patent No. 6,211,955 (Basiji), a publication by Young et al. (*Towards automatic cell identification in DIC microscopy*), and a publication by Nicoletti (*Common Methods for Measuring Apoptotic Cell Death in Flow Cytometry*).

The Examiner has noted that Claims 45-47, each of which depend upon a different independent claim, recite patentable subject matter. Applicants have amended independent Claim 1 based on Claim 45, independent Claim 8 based on Claim 46, and independent Claim 16 based on Claim 47. Such amendments essentially rewrite the objected to claims in independent form, thus Claims 1, 8 and 16 appear to be allowable over the prior art.

The Examiner further objected to dependent Claim 48, which is identical to dependent Claim 45. Applicants had intended dependent Claim 48 to depend from independent Claim 29, such that the novel technique for determining spatial frequency content data from an image was recited in a dependent claim related to each of independent Claims 1, 8, 16 and 29.

The novel subject matter of dependent Claim 48 has been incorporated into independent Claim 29, thus it appears that each independent claim as amended herein distinguishes over the art.

In consideration of the amendment to the claims and the Remarks set forth above, it is applicants' position that all claims in the current application are patentable over the art of record. The Examiner is thus requested to pass this case to issue without further delay. In the event that any other issues remain, the Examiner is invited to telephone applicants' attorney at the number listed below.

Respectfully submitted,

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